

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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RALPH M. PROVINO,

Plaintiff,

v.

JAUN TREY MENDEZ, III,

Defendant.

Case No. 3:21-cv-00462-MMD-CLB

ORDER

I. SUMMARY

Pro se Plaintiff Ralph M. Provino brings this action under 42 U.S.C. § 1983 and has filed an application to proceed *in forma pauperis*. (ECF No. 1 (“IFP Application”), 1-1 (“Complaint”).) Before the Court is a Report and Recommendation (“R&R”) of United States Magistrate Carla L. Baldwin (ECF No. 2), recommending the Court grant Provino’s IFP Application and dismiss the Complaint with prejudice. Provino filed five untimely objections to the R&R.¹ (ECF Nos. 3, 4, 5, 6, and 7 (collectively “Objections”).) Because the Court agrees with Judge Baldwin’s screening analysis of Provino’s Complaint and as further explained below, the Court will accept the reasoning in the R&R and will therefore grant Provino’s IFP Application and dismiss the Complaint. However, because it is not apparent what claims Provino is attempting to raise, dismissal will be without prejudice, but without leave to amend.

II. BACKGROUND

Although the Complaint names “Jaun Trey Mendez III P.C. Texas Attorney” as the sole Defendant in this matter, Provino does not include any factual or legal allegations.

¹Provino had until November 23, 2021, to file an objection to the R&R. (ECF No. 2.) The Objections were filed November 24, November 30, November 30, December 3, and December 6, respectively. (ECF Nos. 3, 4, 5, 6, and 7.)

1 (ECF No. 1.) Under the basis of federal jurisdiction, Provino indicates both federal
2 question and diversity jurisdiction and writes “Federal Treaty, Discrimination, Torture,
3 Cruel and Unusual Punishment, and Mistreatment of Blind.” (*Id.* at 3.) He seeks \$100
4 million in damages. (*Id.* at 4.) Provino also attaches a letter addressed to Henry Provino
5 from the Texas Department of Insurance, which appears to reference a dispute between
6 the recipient’s mother and an agent of Texas Windstorm Insurance Association, Jim
7 Oliver, over an alleged \$1.5 million payout for a condemnation. (*Id.* at 6.)

8 Judge Baldwin screened the Complaint and concluded Provino had not made any
9 allegations. (ECF No. 2 at 3.) Moreover, Judge Baldwin reasoned, nothing in the
10 Complaint would give rise to a federal constitutional or statutory right. (*Id.* at 4.) She
11 concluded that leave to amend was not appropriate because the deficiencies could not
12 be cured by amendment. (*Id.*)

13 Provino filed five Objections to the R&R. None of the Objections challenged Judge
14 Baldwin’s reasoning, or in any way referred to the conclusions in the R&R. Instead,
15 Provino includes piecemeal arguments and multiple attachments relating to alleged fraud
16 on the part of a Texas attorney, Juan Trey Mendez, III. Indeed, in one Objection Provino
17 appears to attempt to amend the Complaint to include claims against Texas Governor
18 Greg Abbott and the other Texas state agencies or officers, alleging claims titled “Murder”
19 and “Betrayal”. (ECF No. 3 at 13-20.) In another Objection, Provino seeks to sue the State
20 of Texas (ECF No. 4), and in another he asserts that four individuals defrauded a Texas
21 Bank (ECF No. 5).

22 **III. LEGAL STANDARD**

23 The Court “may accept, reject, or modify, in whole or in part, the findings or
24 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party
25 fails to object to a magistrate judge’s recommendation, the Court is not required to
26 conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas*
27 *v. Arn*, 474 U.S. 140, 149 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114,
28 1116 (9th Cir. 2003) (“De novo review of the magistrate judges’ findings and

1 recommendations is required if, but *only* if, one or both parties file objections to the
2 findings and recommendations.”) (emphasis in original); Fed. R. Civ. P. 72, Advisory
3 Committee Notes (1983) (providing that the Court “need only satisfy itself that there is no
4 clear error on the face of the record in order to accept the recommendation.”). Where a
5 party timely objects to a magistrate judge’s report and recommendation, then the Court
6 is required to “make a de novo determination of those portions of the [report and
7 recommendation] to which objection is made.” *Id.*

8 **IV. DISCUSSION**

9 As a preliminary matter, the Court finds that Provino has demonstrated he is
10 unable to pay the filing fee, and will therefore grant his IFP Application. (ECF No. 1.) The
11 Court now considers the Complaint.

12 None of Provino’s Objections were timely, so de novo review is not required. But
13 even if the Court did conduct de novo review, in light of the arguments in the Objections
14 the Court would reach the same conclusion as Judge Baldwin. Provino’s Complaint, as
15 well as his apparent attempts to amend the Complaint to add more defendants and claims
16 through his Objections, do not comprehensibly allege any plausible claim against any
17 defendant. It is not even clear to the Court precisely what conduct Provino is basing his
18 Complaint upon—the sprawling array of potential incidents, defendants, and types of
19 claims appear to be disconnected. Moreover, most if not all of the complained conduct
20 appears to have taken place in Texas. It is not clear whether the Court would have
21 jurisdiction over any of the defendants, much less any of the potential claims.

22 The Court further agrees with Judge Baldwin that leave to amend would be futile.
23 *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995). It is not clear from the
24 Complaint or any of Provino’s later filings that the action could be amended to state a
25 federal claim against a defendant over whom the Court could exercise personal
26 jurisdiction. Moreover, despite the five Objections, none of Provino’s allegations are clear
27 and most are expressly incoherent. However, because it is not clear what allegations
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1 Plaintiff appears to be making, the Court will dismiss the Complaint without prejudice, but
2 without leave to amend.

3 **V. CONCLUSION**

4 The Court notes that the parties made several arguments and cited to several
5 cases not discussed above. The Court has reviewed these arguments and cases and
6 determines that they do not warrant discussion as they do not affect the outcome of the
7 issues before the Court.

8 It is therefore ordered that Provino's objections (ECF Nos. 3, 4, 5, 6, and 7) to the
9 Report and Recommendation of U.S. Magistrate Judge Carla L. Baldwin are overruled.
10 The Report and Recommendation (ECF No. 2) is accepted in full.

11 It is further ordered that Provino's application to proceed *in forma pauperis* (ECF
12 No. 1.) is granted.

13 The Clerk of Court is directed to file the complaint (ECF No. 1-1).

14 It is further ordered that the complaint is dismissed without prejudice and without
15 leave to amend.

16 The Clerk of Court is directed to enter judgment accordingly and close this case.
17 No further documents may be filed in this now closed case.

18 DATED THIS 8th Day of December 2021.

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21 MIRANDA M. DU
22 CHIEF UNITED STATES DISTRICT JUDGE
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